

Ryan M. Shannon

From: Yeager, Jay <Jay.Yeager@faegrebd.com>
Sent: Thursday, July 19, 2018 4:54 PM
To: Ryan M. Shannon
Subject: FW: DRAFT meet and confer response

Ryan,

Thanks for your time on our call Tuesday. I thought it was a productive meet and confer conversation. I'll respond according to the five bullet points you sent me later yesterday.

- Until discovery is complete, we cannot waive claims as to any particular district. We will by the date you suggested, July 24th, provide a list of the districts as to which we presently have information sufficient to base a challenge under the district-by-district standard, and identify at least generally the evidence on which we intend to rely. We propose further to commit to supplement our responses generally with regard to your contention Interrogatories if both sides can agree on reciprocal supplementation and a date, probably post-discovery cutoff, for final supplementation.
- We understand and appreciate your clarification of the scope of these two requests. We will produce as soon as practicable any document reflecting "facts or data that the parties' attorney provided and that the expert considered in forming the opinions" as required by Rule 26(b)(4)(C)(ii). I can do that as to Warshaw and Mayer by 7/24. As you know I will not have meaningful access to Dr. Chen until August 1st.
- As you and I discussed yesterday, I don't have additional information regarding Professor Chen's "source code" beyond the discussions you and I had in mid-June. As we discussed in June, I understood then that Dr. Chen explained that he typically saved his java work in the .jar compiled format and would have at most earlier drafts of the work in .java format. We respectfully maintain our objection to producing draft reports or portions of reports, which objection would cover draft code not in final form. However I would be glad to revisit with Dr. Chen more fully in early August the issues that you've raised and commit to providing you any additional information available at that point.

Given the circumstances, we would also consider if you are interested a limited carve-out from the discovery cutoff to allow you to address this subject before and for some period after Professor Chen's scheduled deposition. However we are not in a position to agree to the appointment of a court-appointed expert on this issue at time.

- I will consult with Professor Mayer regarding the shape files you request regarding the alternative maps and respond no later than July 24th.
- We believe that discussions of counsel with potential witnesses and their counsel is subject to work product protection and other protections under Rule 26. However we agree that you are entitled any subsequent limitation in the scope of a subpoena served, which we will produce by July 24th.

Of course we are not waiving the right to supplement otherwise in light of documents not yet produced and other discovery not yet completed. If you think it would be productive I am available to discuss these matters further by phone.

Jay